

# **DIVIDER**

**STATE OF NORTH DAKOTA  
INFORMATION TECHNOLOGY DEPARTMENT  
SFN 2053 (4-2002)**

**PU-2410-00-534**

**360networks (USA) inc.**

**Local Exchange**

**Public Convenience & Nece**

**Filed 10/13/2000**

**Closed 12/21/2000**

**00**

**Scott, Sandi L.**

---

**From:** Bauske, Shelly A.  
**Sent:** Thursday, March 01, 2001 3:30 PM  
**To:** Scott, Sandi L.  
**Subject:** Money Received.....

Case No. PU-2207-00-333  
Pathnet  
\$167.19

Case No. PU-2410-00-534  
360networks (USA) inc  
\$257.17

**17 PU-2410-00-534**

Pages: 0

\$257.17 received

by 360networks (USA) inc.

03/02/2001

CC: Comm Legal Ilona Jerry .

**APPROVED**

DATE: 1-24-01  
KME

**MOTION**

**January 24, 2001**

**360networks (USA) inc.  
Interexchange  
Public Convenience & Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.  
Local Exchange  
Public Convenience & Necessity**

**Case No. PU-2410-00-534**

I move the Commission bill 360networks (USA) inc. for costs incurred to date in Case Nos. PU-2410-00-527, 360networks (USA) inc., Interexchange, Public Convenience & Necessity and PU-2410-00-534, 360networks (USA) inc., Local Exchange, Public Convenience & Necessity.



# Public Service Commission

State of North Dakota

## COMMISSIONERS

Bruce Hagen  
President  
Susan E. Wefald  
Leo M. Reinbold

January 24, 2001

600 E Boulevard Ave. Dept. 408  
Bismarck, North Dakota 58505-0480  
e-mail: sab@oracle.psc.state.nd.us  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

Executive Secretary  
Jon H. Mielke

Lance J M Steinhart  
6455 E Johns Crossing Ste 285  
Duluth GA 30097

RE: Case No. PU-2410-00-527  
360networks (USA) inc.  
Interexchange  
Public Convenience & Necessity


Case No. PU-2410-00-534  
360networks (USA) inc.  
Local Exchange  
Public Convenience & Necessity

Enclosed is a copy of the statement approved at the January 24, 2001 Public Service Commission meeting for the expenses incurred to date in Case Nos. PU-2410-00-527 and PU-2410-00-534.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the Public Service Commission.

Sincerely,

  
Gloria Geiger  
Administrative Assistant  
701-328-2401

Enc.

## **Billing Statement**

**January 24, 2001**

360networks (USA) inc.  
Interexchange  
Public Convenience & Necessity

Case No. PU-2410-00-527

360networks (USA) inc.  
Local Exchange  
Public Convenience & Necessity

Case No. PU-2410-00-534

### **Expenses Incurred to Date:**

Advertising Costs	\$257.17
-------------------	----------

### **Amount Due:**

360networks (USA) inc.	\$257.17
------------------------	----------

### **Send Payment To:**

Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480

**Federal Tax ID 45-0309764**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

360networks (USA) inc.  
Interexchange  
Public Convenience & Necessity

Case No. PU-2410-00-527

360networks (USA) inc.  
Local Exchange  
Public Convenience & Necessity

Case No. PU-2410-00-534

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of December, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Order**

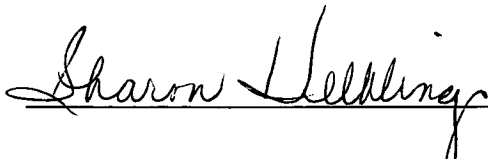
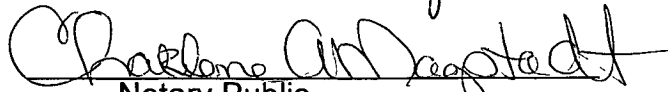
The envelope was addressed as follows:

Julie R Hawkins  
360networks (USA) inc.  
143 Union Blvd Ste 300  
Lakewood CO 80228  
**Cert. No. 7000 0520 0022 8653 2952**

Lance J M Steinhart  
6455 East Johns Crossing Ste 285  
Duluth GA 30097  
**Cert. No. 7000 0520 0022 8653 2969**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **21st day of December, 2000**.

  
  
Notary Public

SEAL

15 **PU-2410-00-534**

Pages: 2

Affidavit of Service by Certified Mail

by Public Service Commission

12/21/2000

CC: Comm Legal Illona Jerry .

CHARLENE A. MAGSTADT  
Notary Public, State of NORTH DAKOTA  
My Commission Expires Jan. 7, 2004

**PU-2410-00-534**

Copies To:

State Library (8 copies)

Historical Society

Associated Press

**MOTION**

**December 20, 2000**

APPROVED:  
DATE: 12-20-00  
KME

**360networks (USA) inc.  
Interexchange  
Public Convenience and Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-2410-00-534**

I move the Commission adopt the Order and issue Certificates of Public Convenience and Necessity to 360networks (USA) inc. to provide local and interexchange telecommunications services throughout North Dakota, Case Nos. PU-2410-00-527 and PU-2410-00-534.

JRL/sdh

000534-51.doc



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**360networks (USA) inc.**  
**Interexchange**  
**Public Convenience and Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.**  
**Local Exchange**  
**Public Convenience and Necessity**

**Case No. PU-2410-00-534**

**ORDER**

**December 20, 2000**

On October 11, 2000, in Case No. PU-2410-00-527, 360networks (USA) Inc. filed an application for a certificate of public convenience and necessity to provide facilities-based interexchange telecommunications services throughout North Dakota.

On October 13, 2000, in Case No. PU-2410-00-534, 360networks (USA) Inc. filed an application for a certificate of public convenience and necessity to provide facilities-based local exchange telecommunications services throughout North Dakota.

On October 25, 2000, the Commission issued a Notice of Opportunity for Hearing in these cases, which provided until November 30<sup>th</sup> for receiving comments or hearing requests. No comments or requests for hearing were received regarding either application. The notice identified the following issues to be considered:

1. Fitness and ability of the applicant to provide service.
2. Adequacy of the proposed service.
3. The technical, financial and managerial ability of the applicant to provide service.

On October 31, 2000, the Public Service Commission's Director of Accounting filed a memorandum indicating that 360networks (USA), Inc. has the financial ability to provide telecommunications service.

360networks (USA), Inc. is a Nevada Corporation headquartered at Lakewood, Colorado and a wholly owned subsidiary of 360networks, Inc., also a Nevada Corporation. 360networks (USA), Inc. is in the process of obtaining nation wide authority and has been certified in several states and has not been denied authority in any state. Biographical information provided by 360networks (USA), Inc. indicates that its management and key personnel have extensive telecommunications experience.

The Commission finds 360networks (USA), Inc. is fit, able, and has the technical, financial and managerial ability to provide service.

Although 360networks (USA), Inc. intends to eventually offer local exchange services, it will focus initially on providing non-switched dedicated and private line high-capacity fiber optic transmission and access services to other carriers and internet service providers. 360networks (USA), Inc. has already begun work to install a fiber optic network in North Dakota. The Commission finds 360networks (USA), Inc.'s proposed service is adequate.

In this Case, as in other cases in which statewide authority was requested, the Commission will adhere to the precedent established in the AT&T certificate case, Case No. PU-453-96-83. In AT&T, the Commission held that its determination of the public interest with regard to the service territories of rural telephone companies is subject to any future proceedings under Section 251(f)(1) or (2) of the Telecommunications Act of 1996 (47 U.S.C. §251(f)(1) or (2)). The Commission also held that granting the certificate on a statewide basis is not a ruling that affects the rights of specific rural telephone companies under 47 U.S.C. §251(f).

### Order

The Commission Orders:

1. The applications of 360networks (USA), for certificates of public convenience and necessity to provide facilities-based competitive local exchange and interexchange services throughout North Dakota is GRANTED.
2. Granting 360networks (USA), Inc. a certificate to provide local exchange service on a statewide basis does not affect the rights of rural telephone companies under 47 U.S.C. §251(f).

### PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Bruce Hagen President	Leo M. Reinbold Commissioner

# STATE OF NORTH DAKOTA

## Certificate of Public Convenience and Necessity

### Certificate Number 4608

*This is to certify that public convenience and necessity require, and permission is granted for 360networks (USA) inc., a telecommunications public utility, to provide statewide local exchange telecommunications services, with facilities, in North Dakota.*

*This certificate is issued in Case No. PU-2410-00-534 and is conditioned upon 360networks (USA) inc. securing the franchise or other authority of the proper municipal or other authority for the exercise of these rights and privileges.*

*Bismarck, North Dakota, December 20, 2000.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**360networks (USA) inc.**

143 Union Boulevard

Suite 300

Lakewood, Colorado

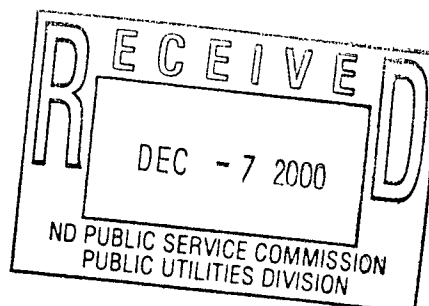
80228

(t) 303.854.5000

(f) 303.854.5100

www.360.net

December 6, 2000



Mr. Jon Mielke  
Executive Secretary  
Public Service Commission  
State Capitol  
600 E. Blvd.  
Bismarck, ND 58505-0480

RE: Maps of 360networks' North Dakota Facilities

Dear Mr. Mielke:

Pursuant to the December 6, 2000 Informal Hearing, please find the enclosed maps illustrating 360networks (USA) inc.'s Proposed Fiber Optic Route in the State of North Dakota.

If you have any questions regarding this information, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Julie R. Hawkins'.

Julie R. Hawkins  
Assistant General Counsel

**MB****360networks****NORTH DAKOTA**

United States - December 2000

This document and the information contained herein is confidential and the property of 360networks (USA) inc. It may not be used, copied or distributed without the express consent of 360networks (USA) inc. or used for any purpose other than the purpose for which it was provided. Any unauthorized use of this information is strictly prohibited. The information contained herein is an approximation only and may not reflect the actual network. Consequently, 360networks (USA) inc. does not guarantee and shall not be liable for the accuracy of this information.

DATA ASSET MANAGEMENT DEPARTMENT  
MAP ID# 07-046-00908

**LEGEND**  
**Site Type**

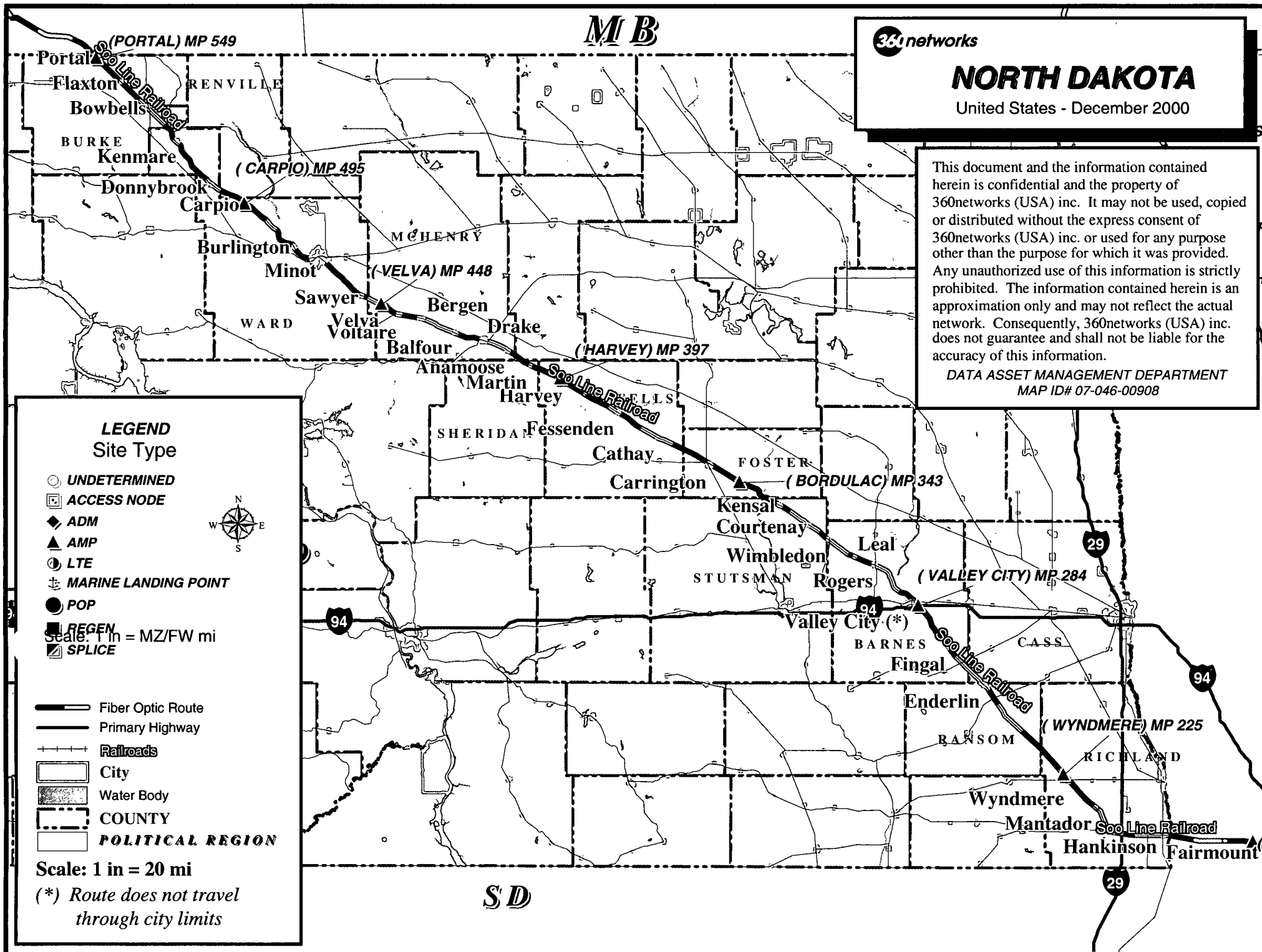
- UNDETERMINED
  - ACCESS NODE
  - ◆ ADM
  - ▲ AMP
  - Ⓛ LTE
  - ⚓ MARINE LANDING POINT
  - POP
  - REGEN
  - ▨ SPLICE
- Scale: 1 in = MZ/FW mi



- Fiber Optic Route
- Primary Highway
- Railroads
- City
- Water Body
- COUNTY
- POLITICAL REGION

Scale: 1 in = 20 mi

(\*) Route does not travel  
through city limits

**SD**

## INFORMAL AGENDA

December 6, 2000

PU-2410-00-527      360networks (USA) inc.  
Interexchange  
Public Convenience and Necessity

PU-2410-00-534      360networks (USA) inc.  
Local Exchange  
Public Convenience and Necessity

PU-2417-00-548      James Valley Cooperative Telephone Company  
Local Exchange  
Public Convenience and Necessity

PU-418-00-555      BEK Communications Cooperative  
Designated Eligible Carrier  
Application

PU-418-00-556      BEK Communications Cooperative  
Local Exchange  
Public Convenience and Necessity

PU-401-00-593      Otter Tail Power Company  
WAPA Bill Crediting Program  
Tariff

PU-2453-00-632      Park Avenue Apartments  
Master Meter Waiver  
Approval

*With drawn*

<b>8</b>	<b>PU-2410-00-527</b>	Pages: 1	<b>11</b>	<b>PU-418-00-555</b>	Pages: 0
	Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal Illona Jerry .			Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal PUD (3)	
<b>10</b>	<b>PU-2410-00-534</b>	Pages: 0	<b>13</b>	<b>PU-418-00-556</b>	Pages: 0
	Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal Illona Jerry .			Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal PUD (3)	
<b>13</b>	<b>PU-2417-00-548</b>	Pages: 0	<b>4</b>	<b>PU-401-00-593</b>	Pages: 0
	Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal PUD (3)			Informal Hearing held by Public Service Commission 12/06/2000      CC: Comm Legal PUD (3)	

# Affidavit of Publication

State of North Dakota )

County of Burleigh )

DEC -

Laurie Thid

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

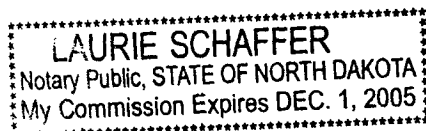
360 networks time(s)  
as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Laurie Thid

Subscribed and sworn to before me this 13<sup>th</sup> day of November A.D. 2000.

Laurie Schaffer



9 PU-2410-00-534

Pages: 11

Affidavit of Publication

by North Dakota Advertising Service, Inc.

12/04/2000

CC: Comm Legal Illona Jerry

7 PU-2410-00-527

Pages: 11

Affidavit of Publication

by North Dakota Advertising Service, Inc.

12/04/2000

CC: Comm Legal Illona Jerry

10 PU-2417-00-548

Pages: 11

Affidavit of Publication

by North Dakota Advertising Service, Inc.

12/04/2000

CC: Comm Legal PUD (3)

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**360networks (USA) inc.**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-2410-00-534**

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **31st day of October, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Staff Memo on Financial Ability**


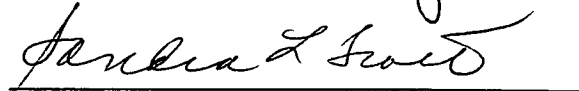
The envelope was addressed as follows:

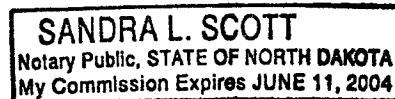
Lance J M Steinhart  
6455 E Johns Crossing Ste 285  
Duluth GA 30097  
**Cert. No. 7099 3400 0014 4513 7528**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **31st day of October, 2000**.

SEAL

  
  
Notary Public







**Public Service Commission**  
State of North Dakota

RECEIVED

OCT 31 2000

# Memorandum

NORTH DAKOTA Boulevard Ave. Dept. 408  
PUBLIC SERVICE North Dakota 58505-0480  
COMMISSION: sab@oracle.psc.state.nd.us  
EXECUTIVE SECRETARY TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

COMMISSIONERS

Bruce Hagen  
President  
Susan E. Wefald  
Leo M. Reinbold

**To:** Jon Mielke  
**From:** Mike Diller *Mike Diller*  
**Date:** October 31, 2000  
**Re:** 360networks inc.  
Local Exchange PC&N  
Case No. PU-2410-00-534

Executive Secretary  
Jon H. Mielke

The following is written to provide the commission with a very limited review of this case regarding the financial ability of the applicant to provide service in North Dakota.

360networks inc. is a publicly traded company. According to financial information provided for the year ended 1999, the Company has sufficient equity to provide service in North Dakota.

The Telecommunications Act of 1996 established a national policy to create a competitive environment for telephone service. 360networks Inc. is one of many companies responding to the Act.

I see no reason to deny the applicant's request.

In accordance with the Commission's wishes, I have served this document on the applicant.

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**360networks (USA) inc.**  
**Interexchange**  
**Public Convenience & Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-2410-00-534**

**James Valley Cooperative Telephone Company**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-2417-00-548**

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of October, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Notice of Opportunity for Hearing**

The envelope was addressed as follows:

Julie R Hawkins  
360networks (USA) inc.  
143 Union Blvd Ste 300  
Lakewood CO 80228  
**Cert. No. 7099 3400 0014 4513 7337**

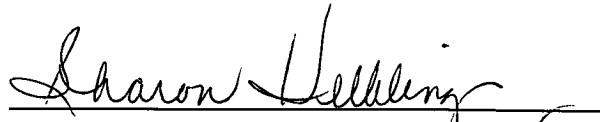

Lance J M Steinhart  
6455 East Johns Crossing Ste 285  
Duluth GA 30097  
**Cert. No. 7099-3400 0014 4523 7375**

Kent Hyde  
Hyde & Allred Law Office LLP  
1001 1<sup>st</sup> Ave SE  
Aberdeen SD 57401-4702  
**Cert. No. 7099-3400 0014 4523 7436**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **26th day of October, 2000.**

SEAL

  
  
Notary Public



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**360networks (USA) inc.**  
**Interexchange**  
**Public Convenience and Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-2410-00-534**

**James Valley Cooperative Telephone Company**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-2417-00-548**

**AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of October, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

**Notice of Opportunity for Hearing**


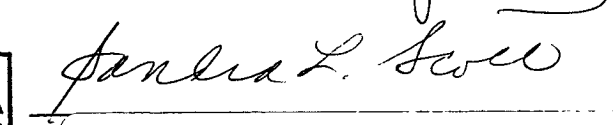
The envelopes were addressed as follows:

***See Attached List***

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **26th day of October, 2000**.

**SANDRA L. SCOTT**  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires JUNE 11, 2004

**5 PU-2410-00-534**

Pages: 13

Affidavit of Service by Ordinary Mail or  
E-Mail  
by Public Service Commission

10/26/2000

CC: Comm Legal Ilona Jerry .

**PU-2410-00-534**

Copies To:

State Library (8 copies)

Historical Society

Associated Press

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Barb Berkenpas

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William Brudvik

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Don Lee

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Janis Peterson

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Lise Strom

harumiyamamoto@dwt.com  
Harumi Yamamoto

ruth.holder@teligent.com  
Ruth Holder

nlarsen@nvc.net  
Clint Hanson  
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235 E 1st Ave  
Groton SD 57445

j1chapman@acomminc.com  
Jerry Chapman  
Acomm Inc  
510 1st Ave N Ste 203  
Minneapolis MN 55403-0343

smassey@bepc.com  
Sheryl Massey  
Basin Electric Power Coop  
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Bismarck ND 58501-0564

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PO Box 230  
Steele ND 58482-0230

jtmgr@bektel.com  
Jerome Tishmack  
BEK Communications I Inc  
PO Box 230  
Steele ND 58482-0230

ken@staff.ctctel.com  
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L Dan Wilhelmson  
Consolidated Telephone Cooperative  
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Dickinson ND 58601-1077

drtc@drtel.net  
Darren Moser  
Dickey Rural Telephone Cooperative  
PO Box 69  
Ellendale ND 58436-0069

glenn.richards@shawpittman.com  
Glenn Richards  
Glenn Richards  
ShawPittman  
2300 N St NW

rlaqua@rrv.net  
Ronald Laqua  
Halstad Telephone Company  
PO Box 55  
Halstad MN 56548-0055

dclark@hq.idt.net  
Diane Clark  
IDT America, Corp.  
520 Broad St 7th Fl  
Newark NJ 07102

kander@ictc.com  
Keith Anderson  
Inter-Community Telephone Co. II  
PO Box 8  
Nome ND 58062-0008

nschmid@acginc.net  
Neil Schmid  
Ionex Communications North Inc  
5710 LBJ Frwy Ste 215  
Dallas TX 75240

Michel.Murray@MCI.com  
Michel Murray  
MCI WorldCom Inc  
707 17th St Ste 3600  
Denver CO 80202

john\_sullivan@cable.comcast.com  
John Sullivan  
McLeodUSA

meredith.gifford@gecapital.com  
Meredith Gifford  
GE Capital Comm Services Corp  
6540 Powers Ferry Rd  
Atlanta GA 30339

cooperstown@mlgc.com  
Ray Brown  
Griggs County Telephone Company  
Cooperstown ND 58425

hold@texas.net  
Dana Wilson  
Home Owners Long Distance Inc  
8647 Wurzbach Rd #M-1  
San Antonio TX 78240-1245

kander@ictc.com  
Keith Anderson  
Inter-Community Telephone Co  
PO Box 8  
Nome ND 58062-0008

itci@means.net  
Bruce Reuber  
Interstate Telcom Consulting Inc  
130 Birch Ave W  
Hector MN 55342-0668

skat@means.net  
Steven Katka  
Loretel Systems Inc  
13 E 4th Ave  
Ada MN 56510

skillebrew@deltacom.com  
Sharon Killebrew  
McLeodUSA

wheaston@mcleodusa.com  
William Heaston  
McLeodUSA  
P O Box 3177  
Cedar Rapids IA 52406-3547

amy.ibis@dtg.com  
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140 North Phillips Ave Ste 404  
Sioux Falls SD 57104-6711

sbunn@mlgc.com  
Shelie Bunn  
Moore & Liberty Telephone Co  
Enderlin ND 58027

dhill@ndarec.com  
Dennis Hill  
ND Assn Rural Electric Coops  
PO Box 727  
Mandan ND 58554-0727

lclemens@nft.net  
Larry Clemens  
Noonan Farmers Tele Co  
Noonan ND 58765

cajuul@norstan.com  
Cathy Juul  
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Quintelco Inc  
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601 S Harbour Island Blvd Ste 220  
Tampa FL 33602-5925

**Helbling, Sharon D.**

---

**From:** Helbling, Sharon D.  
**Sent:** Thursday, October 26, 2000 8:52 AM  
**To:** 'ndna'  
**Subject:** Otter Tail Power Company Notice of Filing and Notice of Hearing. Case No. PU-401-00-108

**Please have the attached Notice of Filing and Notice of Hearing and Map published in the next issue of the official Sargent County newspaper. Could you also print this Notice and Map( I will fax the map to you) as a "News Item Only" article.**

**The notice and map must be published by November 9th in order for us to meet our legal obligations, and again during the week of November 20th. The map must be published as is. If you cannot meet these requirements, please call me at 701-328-4076.**

**Please direct the bill to the Public Service Commission, along with a tear sheet for billing purposes. If you have any questions, give me a call.**

**Thank you.**

**Sharon Helbling  
Public Utilities Division**

alert.txt

4

**PU-2410-00-534**

Pages: 1

Notice e-mailed to NDNA requesting  
publication  
by Public Service Commission

10/26/2000

CC: Comm Legal Ilona Jerry

**MOTION**

**October 25, 2000**

APPROVED:  
DATE: 10-25-00  
KMF

**360networks (USA) inc.  
Interexchange  
Public Convenience and Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-2410-00-534**

**James Valley Cooperative Telephone Company  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-2417-00-548**

I move the Commission issue a Notice of Opportunity for Hearing in the applications of 360networks (USA) inc. for Certificates of Public Convenience and Necessity to provide local and interexchange telecommunications services throughout North Dakota, Case Nos. PU-2410-00-527 and PU-2410-00-534; and in the application of James Valley Cooperative Telephone Company for a Certificate of Public Convenience and Necessity to provide local exchange telecommunications service in the Hecla, South Dakota exchange, serving North Dakota customers, Case No. PU-2417-00-548.

JRL/sdh

000534-2.doc

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**360networks (USA) inc.**  
**Interexchange**  
**Public Convenience and Necessity**

**Case No. PU-2410-00-527**

**360networks (USA) inc.**  
**Local Exchange**  
**Public Convenience and Necessity**

**Case No. PU-2410-00-534**

**James Valley Cooperative Telephone Company**  
**Local Exchange**  
**Public Convenience and Necessity**

**Case No. PU-2417-00-548**

**NOTICE OF OPPORTUNITY FOR HEARING**

**October 25, 2000**

On October 11, 2000, in Case No. PU-2410-00-527, 360networks (USA) Inc. filed an application for a certificate of public convenience and necessity to provide facilities-based interexchange telecommunications services throughout North Dakota.

On October 13, 2000, in Case No. PU-2410-00-534, 360networks (USA) Inc. filed an application for a certificate of public convenience and necessity to provide facilities-based local exchange telecommunications services throughout North Dakota.

On October 18, 2000, in Case No. PU-2417-00-548, James Valley Cooperative Telephone Company, using the trade name "James Valley Telecommunications", filed an application for a certificate of public convenience and necessity to provide facilities-based local exchange telecommunications services to North Dakota customers served from the Hecla, South Dakota exchange.

The issues to be considered in this matter are:

1. Fitness and ability of the applicant to provide service.
2. Adequacy of the proposed service.
3. The technical, financial and managerial ability of the applicant to provide service.

Those interested are invited to comment on this application in writing. Persons desiring a hearing must file a written request identifying their interest in the proceeding and the reasons for requesting a hearing. Comments and requests for hearings must

be received by **November 30, 2000**. If deemed appropriate, the Commission can determine the matter without hearing.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

**PUBLIC SERVICE COMMISSION**

  
**Susan E. Wefald**  
**Commissioner**

"ABSENT"  
**Bruce Hagen**  
**President**

  
**Leo M. Reinbold**  
**Commissioner**

**Lance J.M. Steinhart**  
Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

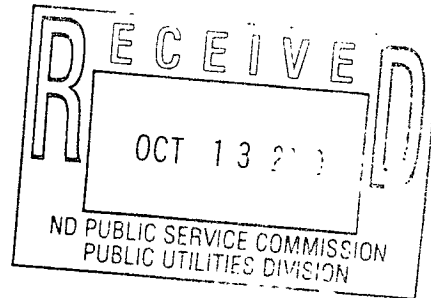
Also Admitted in New York  
and Maryland

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

October 12, 2000

**VIA FEDERAL EXPRESS**

Mr. Jon Mielke  
Executive Secretary  
Public Service Commission  
State Capitol  
600 E. Boulevard  
Bismarck, ND 58505-0480



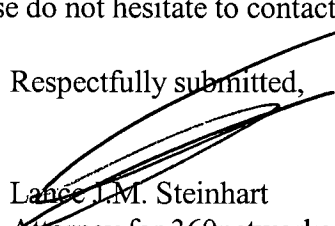
Re: 360networks (USA) inc.

Dear Mr. Mielke:

Enclosed please find for filing an original and seven (7) copies of 360networks (USA) inc.'s Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services.

I have enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed preaddressed-postage-prepaid envelope. If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me. Thank you.

Respectfully submitted,

  
Lance J.M. Steinhart  
Attorney for 360networks (USA) inc.

Enclosures  
cc: Julie Hawkins

In the matter of the Application of )  
360networks (USA) inc. )  
for a Certificate of )  
Public Convenience and Necessity to )  
provide Telecommunications Services )

3. 360networks has applied for a Certificate of Registration to resell interexchange services in North Dakota, and to resell local exchange services in North Dakota. The company also has an application pending for a Certificate of Public Convenience and Necessity to provide facilities-based interexchange services in the State of North Dakota. See Case Nos. TU-2410-00-527 and TU-2410-00-526 (“Previous Cases”).

The following exhibits are either attached to this application or filed in the Previous Cases and incorporated herein by this reference:

Exhibit 1: A copy of the Certificate of Authority of 360networks issued by the State of North Dakota;

Exhibit 2: A certificate of Good Standing from the State of North Dakota;

Exhibit 3: Service Area Map

Exhibit 4: A copy of 360networks, Inc.'s audited Financial Statements for the years ended December 31, 1998 and December 31, 1999.

Exhibit 5: Affidavit of Julie R. Hawkins

Exhibit 6: Biographical Information

3. All correspondence and notices regarding this application should be directed to Lance J.M. Steinhart, of the Law Office of Lance Steinhart, 6455 E. Johns Crossing, Suite 285, Duluth, GA 30097, whose telephone and fax numbers are 770-232-9200 and 770-232-9208 respectively.

4. The rate structure for providing local exchange services is intended to be Competitive with the rates charged by the incumbent provider(s).

5. 360networks is fit and has the experience and ability to provide the local exchange services for which authority is sought herein. 360networks intends to provide throughout the State, all forms of intrastate local exchange telecommunications services. Initially, 360networks will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services, which will allow its customers to obtain fiber optic transmission capacity to develop their own networks. Petitioner plans to offer its fiber optic transmission services to carriers, such as incumbent local exchange carriers, competitive local exchange carriers, and Internet service providers.

However, 360networks seeks authority to provide all forms of local exchange telecommunications services throughout the State, as it eventually expects to offer a broad range of voice and data local exchange services to business and residential customers throughout the State through: (i) the use of its own network facilities; (ii) the resale of services and facilities provided by certificated carriers and (iii) some combination thereof.



360networks may provide all forms of intrastate local exchange telecommunications services including:

- A. Local Exchange Services for business and residence customers that will enable customers to originate and terminate local calls in the local calling area served by other LECs.
- B. Switched local exchange services such as flat-rated and measure-rated local services; vertical services, Direct Inward and Outward Dialed trunks, carrier access, public and semi-public coin telephone services, and any other switched local services that currently exist or will exist in the future.
- C. Non-switched local services (e.g., private line) that currently exist or will exist in the future.
- D. Centrex and/or Centrex-like services that currently exist or will exist in the future.
- E. Digital subscriber line, ISDN, and other high capacity line services.

6. 360networks has the technical, financial and managerial ability to provide the indicated services.

7. By enacting the Telecommunications Act of 1996, Congress has established a national public policy of opening the local exchange to competition and increasing the level of competition in all other areas of telecommunications services. Congress perceived a need for such competition, and 360networks hopes to meet this need to the ultimate benefit of North Dakota consumers.

8. 360networks intends to provide local exchange telecommunications services in those geographic areas in North Dakota currently served by US West as illustrated in the exchange area maps attached hereto as Exhibit 3.

9. The Public Service Commission ("Commission") for the State of North Dakota has Authority to grant this application under the provision of Chapter 49-03.1 of the North Dakota Century Code and the Commission's Rules of Practice and Procedure.

WHEREFORE, 360networks respectfully requests that a Certificate of Public Convenience and Necessity be issued for the services sought herein following appropriate notice; and further, 360networks respectfully requests that the Certificate of Public Convenience and Necessity be issued without hearing, if appropriate, according to the applicable statutes and the rules and regulations of the Commission.

Dated this 15 of Oct, 2000.

360networks (USA) inc.

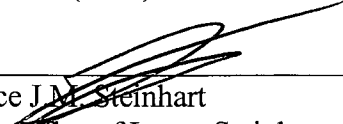
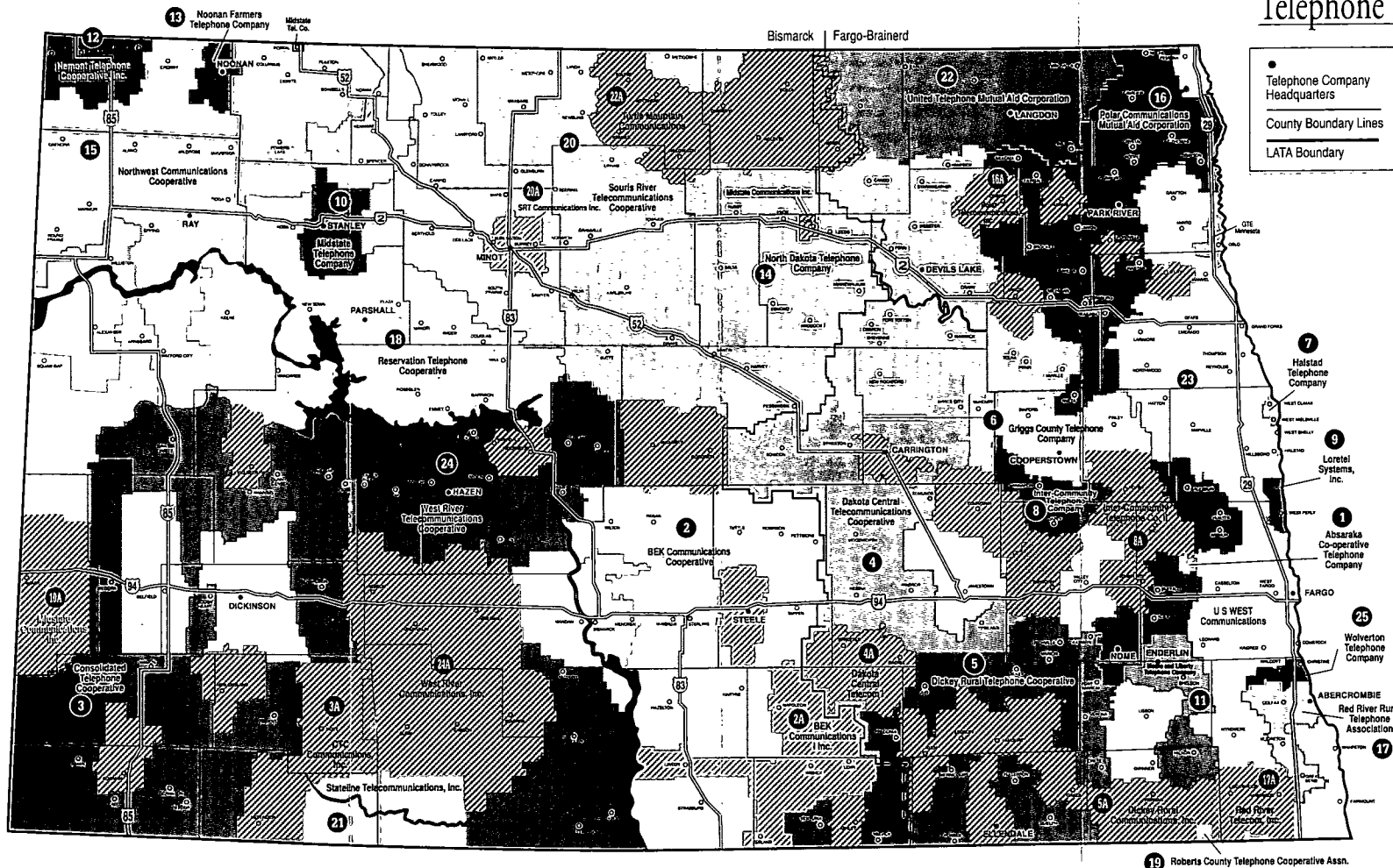
By:   
Lance J. M. Steinhart  
Law Office of Lance Steinhart  
6455 E. Johns Crossing, Suite 285  
Duluth, GA 30097  
Telephone No.: 770-232-9200  
Facsimile No.: 770-232-9208  
Attorney for Applicant

Exhibit 1: A copy of the Certificate of Authority of 360networks issued by the State of North Dakota

Exhibit 2: A certificate of Good Standing from the State of North Dakota

Exhibit 3: Service Area Map

# Telephone Companies Service Area



## Local Exchange Companies

1.	Absaraka Co-operative Telephone Company	(701) 896-3404
2.	BEK Communications Cooperative	(701) 475-2361
2A.	BEK Communications I Inc.	
3.	Consolidated Telephone Cooperative	(701) 225-6061
3A.	CTC Communications, Inc.	
4.	Dakota Central Telecommunications Cooperative	(701) 652-3184
4A.	Dakota Central Telecom I	
5.	Dickey Rural Telephone Cooperative	(701) 349-3687
5A.	Dickey Rural Communications, Inc.	
6.	Griggs County Telephone Company	(701) 797-3301
7.	Halstad Telephone Company	(218) 456-2125
8.	Inter-Community Telephone Company	(701) 924
8A.	Inter-Community Telephone Co. II	
9.	Lovetel Systems, Inc.	(218) 784-7171
10.	Midstate Telephone Company	(701) 628-2522
10A.	Midstate Communications Inc.	
11.	Moore and Liberty Telephone Company	(701) 437-3300
12.	Nemont Telephone Cooperative, Inc.	(406) 783-5654
13.	Noonan Farmers Telephone Company	(701) 925-5717
14.	North Dakota Telephone Company	(701) 662-4700
15.	Northwest Communications Cooperative	(701) 568-3331
16.	Polar Communications Mutual Aid Corporation	(701) 284-7221
16A.	Polar Telecommunications, Inc.	
17.	Red River Rural Telephone Association	(701) 553-8309
17A.	Red River Telecom, Inc.	
18.	Reservation Telephone Cooperative	(701) 862-3115
19.	Roberts County Telephone Cooperative Assn.	(605) 637-5211
20.	Souris River Telecommunications Cooperative	(701) 858-1200
20A.	SRT Communications Inc.	
21.	Stateline Telecommunications, Inc.	(605) 244-5236
22.	United Telephone Mutual Aid Corporation	(701) 256-5156
22A.	Turtle Mountain Communications	
23.	U S WEST Communications	(701) 24
24.	West River Telecommunications Cooperative	(701) 748-2222
24A.	West River Communications, Inc.	
25.	Wolverton Telephone Company	(218) 995-2900

Exhibit 4: A copy of 360networks, Inc.'s audited Financial Statements for the years ended  
December 31, 1998 and December 31, 1999

## AUDITORS' REPORT

To the Directors and Shareholders of  
**360networks Inc. (formerly Worldwide Fiber Inc.)**

We have audited the consolidated balance sheets of **360networks Inc. (formerly Worldwide Fiber Inc.)** as at December 31, 1999 and 1998 and the consolidated income statements and statements of changes in shareholders' equity and cash flows for the year ended December 31, 1999 and for the period from February 5, 1998 (date of incorporation) to December 31, 1998. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards in the United States. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 1999 and 1998 and the results of its operations and its cash flows for the year ended December 31, 1999 and for the period from February 5, 1998 (date of incorporation) to December 31, 1998 in accordance with generally accepted accounting principles in the United States.

On February 25, 2000 except for Note 16 which is as of March 20, 2000, we reported separately to the Directors of **360networks Inc.** on consolidated financial statements for the year ended December 31, 1999 and period from February 5, 1998 (date of incorporation) to December 31, 1998 prepared in accordance with generally accepted accounting principles in Canada.

PricewaterhouseCoopers LLP

Vancouver, Canada  
February 25, 2000 except for Note 15 which is  
as of March 20, 2000



**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Consolidated Balance Sheets**  
**As at December 31, 1999 and 1998**  
(tabular amounts expressed in thousands of U.S. dollars)

	1999	1998
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 521,362	\$ 156,368
Short term investments	21,167	—
Accounts receivable (note 4)	33,351	3,272
Unbilled revenue (note 4)	115,661	10,582
Inventory (note 4)	196,959	29,230
Due from parent-net (note 6)	—	13,412
Deferred tax asset (note 11)	8,838	—
	<u>899,338</u>	<u>212,862</u>
Property and equipment—net (note 4)	77,009	4,014
Assets under construction	300,403	11,461
Deferred tax asset (note 11)	12,040	1,273
Deferred financing costs—net	22,199	6,650
	<u>\$1,310,989</u>	<u>\$ 236,260</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities (notes 4 and 6)	\$ 191,178	\$ 20,296
Deferred revenue	18,831	13,651
Income taxes payable	64,343	7,609
	<u>244,352</u>	<u>41,556</u>
Deferred tax liability (note 11)	3,073	—
Senior notes (note 7)	675,000	175,000
	<u>922,425</u>	<u>216,556</u>
Minority Interest	8,876	1,443
<b>Redeemable Convertible Preferred Stock</b>		
Authorized:		
100,000,000 Series A Non-Voting Redeemable Convertible Preferred Shares		
100,000,000 Series B Subordinate Voting Redeemable Convertible Preferred Shares		
45,000,000 Series C Redeemable Preferred Shares, no par value		
Issued and outstanding:		
150,951,312 (1998—nil) Series A Non-Voting Redeemable Convertible Preferred Shares		
(including accretion of discount from redemption value of \$6,465,000 and net of issuance costs of \$1,638,000) (note 8)	349,827	
<b>Shareholders' Equity</b>		
Capital stock (note 9)		
Authorized:		
Unlimited number of Class A Non-Voting, Class B Subordinate Voting and Class C Multiple Voting Shares, no par value		
Issued and outstanding:		
353,426,400 (1998—nil) Class A Non-Voting Shares	236,436	—
82,629,600 (1998—80,004,800) Class B Subordinate Voting Shares	10,455	7,400
81,840,000 (1998—nil) Class C Multiple Voting Shares	45,232	—
Other capital accounts	(221,387)	1,841
(Deficit) retained earnings	(40,875)	9,020
	<u>29,861</u>	<u>18,261</u>
	<u>\$1,310,989</u>	<u>\$ 236,260</u>
<b>Commitments (note 14)</b>		
<b>Subsequent events (note 15)</b>		

The accompanying notes are an integral part of these consolidated financial statements.

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Consolidated Income Statements**

For the year ended December 31, 1999 and period from  
February 5, 1998 (date of Incorporation) to December 31, 1998.  
The Company's operations commenced on June 1, 1998

(tabular amounts expressed in thousands of U.S. Dollars except per share amounts)

	1999	1998
Revenue .....	\$ 359,746	\$ 164,319
Costs .....	250,612	147,621
Gross profit .....	109,134	16,698
Expenses		
Selling, general and administrative .....	21,846	2,274
Stock-based compensation .....	7,116	—
Depreciation .....	2,998	464
	31,960	2,738
	77,174	13,960
Interest expense .....	33,808	492
Interest income .....	18,122	267
Income before equity income, income taxes and minority interest	61,388	13,735
Equity Income (note 5) .....	—	928
Income before income taxes and minority interest .....	61,388	14,663
Provision for income taxes (note 11) .....		
Current .....	40,338	5,643
Deferred .....	(10,024)	—
	30,314	5,643
	31,074	9,020
Minority interest .....	7,434	—
Net income for the period .....	\$ 23,640	\$ 9,020
Basic and fully diluted (loss) earnings per share (note 2) .....	\$ (0.03)	\$ 0.43
Weighted average number of shares used to compute basic and fully diluted (loss) earnings per share .....	327,313,808	20,964,178

The accompanying notes are an integral part of these consolidated financial statements.

360networks Inc.

(formerly Worldwide Fiber Inc.)

Consolidated Statements of Changes in Shareholders' Equity

For the year ended December 31, 1999 and  
period from February 5, 1998 (date of incorporation) to December 31, 1998

(tabular amounts expressed in thousands of U.S. dollars)

	Class A Non-Voting Shares		Class B Subordinate Voting Shares (formerly Class A common shares)		Class C Multiple Voting Shares		Other Capital Accounts					Total shareholders' equity
	Number of shares	Amount	Number of shares	Amount	Number of shares	Amount	Notes receivable	Additional paid in capital	Deferred compensation	Accumulated other comprehensive income	Deficit retained earnings	
Balance, February 5, 1998	—	\$ —	—	\$ —	—	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Incorporation shares issued, February 5, 1998			1,600	—								—
Issuance of shares for certain Leducor assets with deferred tax asset (note 5)			3,200	7,400				1,066				8,466
Issuance of shares for investments (note 5)			80,000,000	—								—
Excess of proceeds over cost on fiber optic strands to be reacquired from parent company (note 1)								1,154				1,154
Comprehensive income												
Net earnings for the period											8,020	
Accumulated other comprehensive income-foreign currency translation										(401)		
Total comprehensive income												8,619
Balance, December 31, 1998	—	\$ —	80,004,800	7,400	—	\$ —	—	2,242	—	(401)	8,020	18,261
Issuance of shares for certain Leducor assets with deferred tax asset (note 1)			319,995,200	25,019								25,019
Repurchase of Class B Subordinate Voting Shares in exchange for Class B Subordinate Voting Shares and Series C Redeemable Preferred Shares (note 9)			(400,000,000)	(32,419)								(32,419)
Issuance of shares for cash (note 9)			381,496,000	32,419					(2,832)			3,000
Redemption of Series C Redeemable Preferred Shares and stock dividend (note 9)											(45,000)	(45,000)
Issuance of shares for certain Leducor assets with deferred tax asset (note 1)					72,000,000	5,872		(2,242)				3,830
Issuance of shares (note 9)	52,160,000	200,840			9,840,000	99,340	(77,500)		(170,800)			—
Conversion of Class B Subordinate Voting Shares to Class A Non-Voting Shares (note 9)	301,286,400	27,798	(301,286,400)	(27,798)								—
Accretion of Preferred Stock to redemption value											(6,465)	(6,465)
Purchase price adjustment to Preferred Shares								22,070			(22,070)	—
Employee option grants								22,337	(22,337)			—
Amortization of deferred compensation expense									7,116			7,116
Comprehensive income												
Net income for the period											23,840	
Accumulated other comprehensive income-foreign currency translation										660		
Total comprehensive income												24,300
Balance, December 31, 1999	353,426,400	\$238,438	82,629,600	\$10,455	81,840,000	\$45,232	\$ (77,500)	\$ 44,407	\$ (188,553)	\$ 259	\$ (40,876)	\$ 29,881

The accompanying notes are an integral part of these consolidated financial statements.

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Consolidated Statements of Cash Flows**  
**For the year ended December 31, 1999 and period from February 5, 1998**  
**(date of incorporation) to December 31, 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

	1999	1998
<b>Cash flows used in operating activities</b>		
Net Income for the year	\$ 23,640	\$ 9,020
Adjustments to reconcile net income to net cash used for operating activities		
Depreciation	2,998	464
Amortization of deferred financing costs	1,732	—
Equity income	—	(928)
Stock-based compensation	7,116	—
Changes in operating working capital items		
Accounts receivable	(31,887)	(196)
Unbilled revenue	(103,597)	(892)
Inventory	(164,719)	(5,517)
Due from parent	13,841	(16,230)
Accounts payable and accrued liabilities	151,420	2,904
Deferred revenue	(14,008)	13,708
Income taxes payable	26,405	6,491
Advances to WFI USA	—	(21,783)
Deferred income taxes	(10,024)	—
	<u>(97,077)</u>	<u>(13,059)</u>
<b>Cash flows (used in) from investing activities</b>		
Additions to assets under construction	(283,598)	—
Additions to property and equipment	(16,518)	(1,065)
Purchase of short-term investments	(21,167)	—
Cash acquired on acquisition of WFI USA	—	2,242
	<u>(321,283)</u>	<u>1,177</u>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of capital stock	348,000	—
Proceeds from issuance of notes	500,000	175,000
Deferred financing costs	(17,281)	(6,650)
Redemption of Series C Redeemable Preferred Shares	(45,000)	—
	<u>785,719</u>	<u>168,350</u>
Effect of exchange rate changes on cash	(2,363)	(102)
Net increase in cash and cash equivalents	<u>364,996</u>	<u>156,366</u>
Cash and cash equivalents, beginning of period	<u>156,366</u>	<u>—</u>
Cash and cash equivalents, end of period	<u>\$ 521,362</u>	<u>\$ 156,366</u>

The accompanying notes are an integral part of these consolidated financial statements.

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

**1. The Company**

360networks Inc. (formerly Worldwide Fiber Inc.) (the "Company") was incorporated on February 5, 1998 and is indirectly a subsidiary of Leducor Inc. On May 31, 1998 the Company began its operations after certain assets of the Telecommunications Division ("Division") of Leducor Industries Limited ("Leducor"), a Leducor Inc. subsidiary were transferred to the Company. Prior to May 31, 1998, the operations were carried out by the Division.

The Company's operations consist of designing, engineering, constructing and installing terrestrial and marine fiber optic systems for sale or lease to third parties or for its own use. For the period ended December 31, 1998, the Company's revenues related primarily to the Construction Services Agreements with Leducor (see note 1(b)). For the year ended December 31, 1999, the Company's revenue is derived primarily from the construction of fibre optic network assets for telecommunications companies in North America.

**Transactions with Leducor and its affiliates**

a) On May 31, 1998, the Company entered into undertaking agreements whereby certain fiber optic network assets, located in Canada and the U.S. would be transferred to the Company by Leducor in exchange for 319,995,200 Class A Non-Voting Shares. The Company constructed these assets for Leducor under the Construction Services Agreements noted below. Construction of the assets was substantially complete at December 31, 1998 and the Company completed the exchange on March 31, 1999. This transaction was accounted for using the carrying values reported in the accounts of Leducor as a transaction between a parent and a wholly owned subsidiary and accordingly, the fixed assets acquired by the Company are recorded at the carrying amount of the assets in the accounts of Leducor. The cost of property and equipment acquired at March 31, 1999 amounted to \$21,883,000. As a result of the transaction, the Company also received a deferred tax benefit of \$3,136,000 which is reflected as a deferred tax asset.

On May 28, 1999, the Company entered into an agreement with affiliates of Leducor, whereby the Company would acquire certain fiber optic network assets. Closing occurred on September 27, 1999. As consideration, the Company issued 72,000,000 Class C Multiple Voting Shares to affiliates of Leducor. In addition, the Company assumed certain rights and obligations under build agreements with a third party including obligations relating to the completion of those builds and certain support structure, maintenance, license and access, and underlying rights obligations. The cost of the property and equipment acquired amounted to \$25,289,000, the cost of the assets in the accounts of Leducor. The Company also received a deferred tax benefit of \$3,341,000, as a result of a higher tax cost versus accounting cost of fixed assets. The Company also recorded deferred revenue of \$25,000,000 relating to a build commitment assumed from Leducor.

b) Construction Services Agreements entered into May 31, 1998, to provide construction services to Leducor to complete various projects including completion of the fiber optic network assets to be transferred to the Company. As the Company is required to obtain the fiber optic

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

network assets from Leducor, the revenues and costs associated with this portion of the agreement have not been reflected in the income statement for the period ended December 31, 1998. The costs to construct the network were reflected on completion of construction and the issuance of the shares. As at December 31, 1998, the Company had billed Leducor \$18,138,000 for the services related to construction of the fiber optic network assets which exceeds their costs by \$2,099,000. This excess, net of income taxes of \$945,000, had been excluded from the consolidated income statement and had been reported as additional paid in capital.

c) A Management Services Agreement was entered into May 31, 1998 whereby Leducor provides the Company with management staff, administrative and other support services. The Company reimburses Leducor for direct costs and pays Cdn. \$200,000 per month for the Company's share of corporate overheads.

d) Employee Services Agreements were entered into May 31, 1998 whereby the Company obtains the services of certain employees from Leducor on a cost reimbursement basis.

e) The Company has entered into an agreement with Leducor, whereby personnel of Leducor who were involved in the designing and planning of the transatlantic 360atlantic cable stations will oversee management and supervision of construction of these facilities for a fee to Leducor of approximately \$1,700,000.

## **2. Summary of significant accounting policies**

### **Basis of presentation**

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States and include the accounts of the Company, its wholly owned subsidiaries and its 75% interests in Worldwide Fiber (USA), Inc. ("WFI USA"), WFI-CN Fiber Inc. and Worldwide Fiber IC LLC. All significant intercompany transactions and balances have been eliminated on consolidation. For investments where the Company exercises significant influence, the investment is accounted for using the equity method.

On December 31, 1998, the Company increased its interest in WFI USA from 50% to 75% (note 5). The 1998 consolidated income statement and statement of cash flows accounted for the Company's initial 50% interest in WFI USA using the equity method for the period May 31, 1998 to December 31, 1998. The Company's consolidated balance sheets include WFI USA's assets and liabilities, and minority interest therein.

### **Use of estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

**Cash and cash equivalents**

Cash and cash equivalents consists of cash on deposit and highly liquid short-term interest bearing securities with maturity at the date of purchase of three months or less.

**Short term investments**

Short term investments consist of highly liquid short term interest bearing securities with maturities at the date of purchase greater than three months. Interest earned is recognized immediately in the income statement.

**Property and equipment**

Fiber optic network assets constructed for the Company's own use are recorded as property and equipment when the asset is fully constructed. Fiber optic network assets, construction equipment and other property and equipment are recorded at cost. Property and equipment are depreciated using the following rates and methods:

- (a) Fiber optic network assets—straight-line method over 25 years.
- (b) Equipment—hourly usage rates, estimated to depreciate the equipment over the estimated useful lives of the equipment.

**Assets under construction**

Assets under construction include fiber optic network assets constructed for the Company's own use and include direct expenditures of materials and labour, indirect costs attributable to the projects and interest.

**Long-lived assets**

The company reviews the carrying amount of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The determination of any impairment would include a comparison of estimated future operating cash flows anticipated to be generated during the remaining life of the asset to the net carrying value of the asset.

**Inventory**

Inventory consists of fiber optic network assets to be sold or leased under sales-type leases, construction supplies and small tools.

Fiber optic network assets are recorded at the lower of cost and market. Cost includes direct materials and subcontractor charges, labour, and interest (see "capitalization of interest") determined on an average cost basis.

Construction supplies and small tools inventory are recorded at the lower of cost and replacement value.

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

**Revenue recognition**

Revenue for services provided to Leducor for construction projects is recognized in the period the construction services are performed based on the costs incurred.

Revenue and income from construction contracts to develop fiber optic network assets are determined on the percentage-of-completion basis using the cost-to-cost method. Provision is made for all anticipated losses as soon as they become evident. Claims for additional contract compensation are not recognized until resolved.

**Unbilled revenue**

Revenue recognized using the percentage-of-completion basis (see "Revenue recognition") less billings to date is recorded as unbilled revenue. Unbilled revenue classified as current represent billings expected to be collected within the following fiscal year. Billings are rendered on the achievement of certain construction milestones.

**Capitalization of Interest**

Interest is capitalized as part of the cost of constructing fiber optic network assets. Interest capitalized during the construction period is computed by determining the average accumulated expenditures for each interim capitalization period and applying the interest rate related to the specific borrowings associated with each construction project. The total interest capitalized in the year ended December 31, 1999 was \$17,487,000 (December 31, 1998—\$Nil).

**Deferred financing costs**

Costs incurred in connection with obtaining the senior notes financing are deferred and amortized, using the effective interest method, to interest expense over the term of the senior notes.

**Deferred revenue**

Cash received from customers pursuant to contracts where construction has not commenced is recorded as deferred revenue.

**Foreign currency translation and transactions**

The functional currency of the Company's operations located in countries other than the U.S. is generally the domestic currency. The consolidated financial statements are translated to U.S. dollars using the period-end exchange rate for assets and liabilities and weighted-average exchange rates for the period for revenues and expenses. Translation gains and losses are deferred and accumulated as a component of other comprehensive income in shareholders' equity. Net gains and losses resulting from foreign exchange transactions are included in the consolidated income statement.



**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
*(tabular amounts expressed in thousands of U.S. dollars)*

**Comprehensive Income**

Comprehensive Income consists of currency translation adjustments and net income.

**Income taxes**

Income taxes are accounted for using an asset and liability approach, which requires the recognition of taxes payable or refundable for the current period and deferred tax liabilities and assets for future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The measurement of current and deferred tax liabilities and assets is based on provisions of enacted tax laws; the effects of future changes in tax laws or rates are not anticipated. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance, where, based on available evidence, the probability of realization of the deferred tax asset does not meet a more likely than not criteria.

**Fair value of financial instruments**

The fair value of the Company's financial instruments, consisting of cash and cash equivalents, short-term investments, accounts receivable, unbilled revenue, due from parent, accounts payable and accrued liabilities, and income taxes payable approximate their carrying values due to their short-term nature. As at December 31, 1999, the fair value of the \$500,000,000 12% Senior Notes was \$515,000,000 and the fair value of the \$175,000,000 12.5% Senior Notes ("1998 Notes") was \$182,000,000. The fair value of the 1998 Notes at December 31, 1998 approximated its carrying value. Fair value is based on a quoted market price.

**Earnings per Share**

Basic earnings per share is computed by dividing net income available to common stockholders by the weighted average number of common shares (including Class A Non-Voting Shares, Class B Subordinate Voting Shares and Class C Multiple Voting Shares) outstanding for the period. Diluted earnings per share reflects the potential dilution of securities by including other potential common stock, including stock options and redeemable convertible preferred shares, in the weighted average number of common shares outstanding for a period, if dilutive.

The following table sets forth the computation of (loss) earnings per share:

	1999 \$	1998 \$
Net Income .....	23,640	9,020
Less:		
Stock dividend .....	5,000	—
Preferred stock accretion .....	6,465	—
Purchase price adjustment to preferred shares ..	22,070	—
Net (loss) income available to common stockholders .....	(9,895)	9,020

**380networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

The Redeemable Convertible Preferred Shares and stock options are not included in the computation of fully diluted earnings per share as their effect is anti-dilutive.

**Recent accounting pronouncements**

In June 1998, the Financial Accounting Standards Board issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." This statement establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities. The Company does not expect the adoption of SFAS No. 133 to have a material impact on its consolidated financial statements.

In June 1999, the Financial Accounting Standards Board (FASB) issued Interpretation No. 43, "Real Estate Sales, an Interpretation of FASB Statement No. 66." The interpretation is effective for sales of real estate with property improvements or integral equipment entered into after June 30, 1999. Under this interpretation, title must transfer to a lessee in order for a lease transaction to be accounted for as a sales-type lease. The accounting for indefeasible rights of use of fiber optic network assets is evolving and currently being considered by accounting standard setters in the U.S. These changes may have a significant effect on the Company, however it is not possible to determine the consequences of such changes until further accounting guidance has been developed.

**Comparative financial information**

Certain prior year amounts have been reclassified to conform to the current year presentation.

**3. Supplemental cash flow information**

	1999 \$	1998 \$
Cash paid for income taxes .....	13,944	—
Cash paid for interest .....	21,391	—
Supplemental non-cash investing and financing activities:		
Issuance of common shares for		
Certain Leducor assets .....	47,172	8,488
Deferred revenue .....	25,000	—
Additional 25% investment in WFI USA in exchange for		
surrender of note receivable .....	—	3,915
Series C Redeemable Preferred stock dividend .....	5,000	—
Accretion of Preferred Stock to redemption value .....	8,465	—

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1999 and 1998**  
*(tabular amounts expressed in thousands of U.S. dollars)*

**4. Balance Sheet components**

	1999 \$	1998 \$
Accounts receivable		
Trade accounts receivable .....	34,736	3,107
Interest receivable and other .....	615	165
	<u>35,351</u>	<u>3,272</u>
Unbilled revenue		
Revenue earned on uncompleted contracts .....	333,116	22,236
Less: Billings to date .....	217,455	11,654
	<u>115,661</u>	<u>10,582</u>
Inventory		
Fiber optic network assets .....	188,013	28,085
Construction supplies and small tools .....	8,946	1,145
	<u>196,959</u>	<u>29,230</u>
Property and equipment		
Land .....	5,891	—
Fiber optic network assets .....	64,079	—
Equipment .....	10,501	4,478
	<u>80,471</u>	<u>4,478</u>
Less: Accumulated depreciation .....	3,462	464
Property and equipment—net .....	<u>77,009</u>	<u>4,014</u>
Accounts payable and accrued liabilities		
Subcontractor and supplier costs .....	100,481	13,468
Subcontractor holdbacks payable .....	25,676	4,843
Other accrued liabilities .....	36,474	1,493
Interest payable .....	28,567	492
	<u>191,178</u>	<u>20,296</u>

**5. Acquisitions**

**Telecommunications Division assets**

Effective May 31, 1998, the Company entered into a series of agreements whereby equipment, fiber optic network assets and other assets related to the business of the Telecommunications Division of Leducor were transferred to the Company. In addition, the Company was granted a license to use Leducor's patented rail plow technology. This license agreement was for an initial term

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of ten years, renewable annually upon completion of the initial term. As part of this transaction, Leducor retained all existing construction contracts related to the business. This transaction was between entities under common control and has been accounted for using the carrying amounts recorded in Leducor's accounts. The tax basis of substantially all the Canadian assets transferred to the Company was Leducor's carrying values whereas the tax basis of the U.S. assets transferred was their fair value. The deferred tax balances were adjusted for the change in the tax basis of the U.S. assets with the adjustment being reflected as additional paid in capital. As consideration for the transaction, the Company issued 3,200 Class A Common Shares to Leducor.

The assets transferred and consideration given, in connection with this transaction, were as follows:

	\$
<b>Assets</b>	
Construction equipment .....	2,830
Fiber optic network assets .....	4,424
Deferred income taxes .....	1,088
Other .....	146
	<u>8,488</u>
<b>Consideration given</b>	
Class A common Shares and additional paid in capital .....	<u>8,488</u>

**Ledcom Holdings Ltd.**

On December 1, 1998 the Company acquired 50 Class A common Shares representing a 50% interest of Ledcom Holdings Ltd. ("Ledcom") from Worldwide Fiber Holdings Ltd. ("WFHL"), the Company's parent. As consideration, the Company issued 32,000,000 Class A Non-Voting Shares. Ledcom holds the patent to Leducor's rail plow technology, and in conjunction with this acquisition Leducor has committed to grant to the Company a worldwide exclusive license for the use of the rail plow technology. The license will become non-exclusive six months after a change of control of the Company. This transaction was between entities under common control and has been accounted for using the carrying value of the investment recorded in WFHL's accounts which was \$nil.

**Investment in WFI USA**

On August 31, 1998, the Company purchased Leducor's 50% interest in, and a promissory note of \$3,915,000 from WFI USA, in exchange for 48,000,000 Class A Non-Voting Shares of the Company and the issuance of a promissory note by the Company. WFI USA was a joint venture with Mi-Tech Communications LLC ("Mi-Tech") which held the remaining 50% interest in WFI USA. WFI USA's operations consist primarily of developing fiber optic network assets in the United States.

As this transaction was between entities under common control, it was accounted for in a manner similar to a pooling of interests. These financial statements reflect the equity interest in the

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Income of WFI USA from May 31, 1998 to December 31, 1998 in the amount of \$928,000. Prior to May 31, 1998, the equity interest was reported as part of the Telecommunications Division of Leducor.

On December 31, 1998 the Company increased its interest in WFI USA to 75% by surrendering its note receivable from WFI USA of \$3,915,000 for 100 non-voting common shares and 100 Class A Voting Preferred Shares of WFI USA. The acquisition has been accounted for using the purchase method effective December 31, 1998. The purchase price of the additional 25% has been allocated to assets and liabilities based on their fair values. As a result, the net assets acquired were as follows:

	\$
Current assets .....	3,742
Inventory .....	6,048
Fiber optic network assets .....	1,795
Current liabilities .....	10,052

On December 31, 1998, the Company entered into a Shareholders' Agreement ("Agreement") with Leducor, Mi-Tech and Michels Pipeline Construction, Inc. ("Michels") (an affiliate of Mi-Tech). Pursuant to this agreement, Mi-Tech will have the option to convert all of its 25% interest in WFI USA into Shares of the Company should the Company complete a public offering of Shares with an aggregate value of at least \$20,000,000 or there is a change of control of WFI USA. In connection with the conversion, Mi-Tech will be granted certain registration rights in accordance with the Agreement. In addition, after the tenth anniversary of this agreement, Mi-Tech has the option to require WFI USA to purchase all of the Shares owned by Mi-Tech and its affiliates at fair market value. If Mi-Tech exercises this option, the Company can elect to sell all the Shares or assets of WFI USA in which case it will not be required to purchase Mi-Tech's Shares in WFI USA. In the event of a proposed sale of the Shares of WFI USA held by the Company, Mi-Tech will have certain tag-along rights.

Also as part of the Agreement the Company:

- a) Agreed not to participate in any projects or business nor provide advice or assistance to any business which undertakes projects within WFI USA's scope of business, as defined in the Agreement, for a period of four years from the date of the Agreement.
- b) Is restricted from selling, transferring, encumbering or divesting its ownership or control of WFI USA.
- c) WFI USA has an option to purchase from Mi-Tech 24 fiber optic strands along certain existing routes owned by Mi-Tech and its affiliates at fair market value.

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**6. Due from parent**

The amounts due to and from parent are non-interest bearing, have no stated terms of repayment and are due on demand. Contract amounts billed to parent and costs charged by parent exceed revenues and costs as reported in the income statement, for the period ended December 31, 1998, due to fiber optic network assets to be transferred to the Company as described in note 1(b). The balance as at December 31, 1999 of \$7,287,000, is included in accounts payable.

**7. Senior notes**

On July 28, 1999 the Company issued \$500,000,000 12% senior notes (the "Notes"). The Notes are unsecured obligations of the Company bearing interest at 12% payable semi-annually. The Notes are due August 1, 2009 and may be redeemed by the Company on or after August 1, 2004 at certain specified redemption prices ranging up to 106.00%. Up to 35% of the Notes may be redeemed by the Company prior to August 1, 2002 at a redemption price of 112% of the principal amount with the net proceeds from certain sales of the Company's common stock. If a change in control occurs, as defined in the Notes indentures, the holders of the Notes can require the Company to repurchase all or part of the Notes at 101% of the principal amount. Where excess proceeds from certain asset sales, as defined in the Notes indentures, exceeds \$10,000,000 the Company is required to make an offer to repurchase the maximum amount of Notes that can be repurchased with such excess proceeds at an offer price equal to 100% of the principal amount.

On December 23, 1998, the Company issued \$175,000,000 12.5% senior notes (the "1998 Notes"). The 1998 Notes are unsecured obligations of the Company bearing interest at 12.5% payable semi-annually. The 1998 Notes are due December 15, 2005 and may be redeemed by the Company on or after December 31, 2003 at certain specified redemption prices ranging up to 106.25% of the principal amount. Up to 35% of the 1998 Notes may be redeemed by the Company prior to December 15, 2001, at a redemption price of 112.5% of the principal amount with the net proceeds from certain sales of the company's common equity to the public. If a change of control occurs, as defined in the 1998 Notes indenture, the holders of the 1998 Notes can require the Company to repurchase all or part of the 1998 Notes at 101% of the principal amount. If at the end of December 31, 2000 and semi-annually thereafter, the Company's Accumulated Excess Cash Flow, as defined in the 1998 Notes indenture, exceeds \$10,000,000, the Company is required to make an offer to repurchase the maximum principal amounts of 1998 Notes that may be purchased by such Accumulated Excess Cash Flow Amount at an offer price equal to 110% of the principal amount of the 1998 Notes. Under this Excess Cash Flow provision, the Company is not required to repurchase more than 25% of the original principal amount of the 1998 Notes prior to December 31, 2003.

The Notes and 1998 Notes contain certain covenants that restrict the ability of the Company and its subsidiaries to incur additional indebtedness and issue certain preferred stock, pay dividends or make other distributions, repurchase equity interests or subordinated indebtedness, engage in sale and leaseback transactions, create certain liens, enter into certain transactions with

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affiliates, sell assets of the Company or its subsidiaries, issue or sell equity interests of the Company's subsidiaries or enter into certain mergers and consolidations.

**8. Redeemable Convertible Preferred Stock**

On September 9, 1999 the Company authorized various classes of preferred shares.

**Series A Non-Voting Convertible Preferred Shares**

On September 9, 1999, the Company issued 141,868,928 Series A Non-Voting Convertible Preferred Shares ("Series A Preferred Shares") for \$345,000,000. On December 22, 1999, the Company issued an additional 9,082,384 Series A Preferred Shares to the holders of such shares pursuant to the terms of their original purchase agreement dated September 7, 1999.

The Series A Preferred Shares are entitled to dividends on an equivalent basis to the Class A Non-Voting Shares into which the Series A Preferred Shares can be converted. The Series A Preferred Shares rank senior to all classes of capital stock upon liquidation, dissolution and wind-up and are junior in right of payment of all indebtedness of the Company and its subsidiaries.

The Series A Preferred Shares have a mandatory redemption on November 2, 2009 at a liquidation value consisting of the original purchase price of \$2.43 per share plus an adjustment equal to 6% per annum of the purchase price, plus declared and unpaid dividends and the excess of the market value of the Class A Non-Voting Shares over the liquidation value.

Upon a qualified underwritten public offering of at least \$150,000,000 with a share price of at least 300% of the purchase price of the Series A Preferred Shares, each Series A Preferred Share may, at the option of the Company, be converted into Class A Non-Voting Shares at a ratio equal to one plus 6% per annum. If a qualified underwritten public offering occurs by September 9, 2000 the conversion will be on a one for one basis.

The Series A Preferred Shares may be converted by the holders into Class A Non-Voting Shares, at any time, on the same basis as the Company's conversion right and may be converted into Series B Non-Voting Convertible Preferred Shares on a one for one basis. In addition, the holders of the Series A Preferred Shares have anti-dilution protection.

**Series B Subordinate Voting Convertible Preferred Shares**

The Series B Subordinate Voting Convertible Preferred Shares ("Series B Preferred Shares") are entitled to dividends on an equivalent basis to any dividends declared or paid on Class B Subordinate Voting Shares into which the Series B Preferred Shares can be converted. The Series B Preferred Shares rank senior to all classes of capital stock upon liquidation, dissolution and wind-up and are junior in right of payment of all indebtedness of the Company and its subsidiaries. The Series B Preferred Shares are entitled to one vote per share.

The Series B Preferred Shares are mandatorily redeemable on November 2, 2009 at a liquidation value of \$2.43 per share plus an adjustment equal to 6% per annum of the purchase

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price, plus declared and unpaid dividends and the excess of the market value of the Class B Subordinate Voting Shares over the liquidation value.

Upon a qualified underwritten public offering of at least \$150,000,000 with a share price of at least 300% of the purchase price of the Series B Preferred Shares, each Series B Preferred Share, may at the option of the Company, be converted into Class B Subordinate Voting Shares at a ratio equal to one plus 6% per annum. If a qualified underwritten public offering occurs by September 9, 2000 the conversion will be on a one for one basis.

The Series B Preferred Shares may be converted into Class B Subordinate Voting Shares, at any time on the same basis as the Company's conversion right and may be converted into Series A Preferred Shares on a one for one basis. In addition, the holders of the Series B Preferred Shares have anti-dilution protection.

**Series C Redeemable Preferred Shares**

On September 9, 1999, 80,000,000 Series C Redeemable Preferred Shares ("Series C Preferred Shares") were issued pursuant to a stock dividend and 640,000,000 Series C Preferred Shares were issued pursuant to a share re-organization. Subsequently, the Company repurchased the 720,000,000 issued Series C Preferred Shares for \$45,000,000 (note 9). The holders of Series C Preferred Shares are not entitled to dividends or voting rights and may redeem the Series C Preferred Shares at \$1 per share after November 2, 2009.

**9. Capital stock**

On September 9, 1999 the Company authorized various classes of capital stock (see "Share capital transactions").

The holders of the Class A Non-Voting Shares, Class B Subordinate Voting Shares, and Class C Multiple Voting Shares participate equally in dividends declared subject to any preference priority on other classes of shares.

The holders of the Class A Non-Voting Shares are not entitled to voting rights. The holders of Class B Subordinate Voting Shares are entitled to one vote per share, and the holders of Class C Multiple Voting Shares are entitled to 20 votes per share.

In the event of liquidation, dissolution, or wind-up of the Company, any payment or distribution of assets will be paid or distributed equally share for share to the holders of the three classes of capital stock.

The holders of Class A Non-Voting Shares are entitled to convert their Shares to Class B Subordinate Voting Shares on a one for one basis. The holders of Class B Subordinate Voting Shares are entitled to convert their Shares to Class A Non-Voting Shares on a one for one basis at any time prior to September 9, 2000 and into Series A Preferred Shares on a one for one basis. The holders of Class C Multiple Voting Shares are entitled to convert their Shares into Class A Non-Voting Shares or Class B Subordinate Voting Shares on a one for one basis.



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**Share capital transactions**

On September 9, 1999, the Company amended its share capital by re-designating 400,000,000 Class A Voting Shares to Class B Subordinate Voting Shares, cancelling its remaining classes of Shares and creating Class A Non-Voting Shares, Class C Multiple Voting Shares, Series A and B Convertible Preferred Shares and Series C Redeemable Preferred Shares. Subsequently, the Company declared a stock dividend of 80,000,000 Series C Redeemable Preferred Shares for \$5,000,000. Concurrently, the Company repurchased the 400,000,000 outstanding Class B Subordinate Voting Shares from its parent in exchange for the issuance of 381,496,000 Class B Subordinate Voting Shares and 640,000,000 Series C Redeemable Preferred Shares. The Company then redeemed the 720,000,000 outstanding Series C Redeemable Preferred Shares for \$45,000,000 cash resulting in a charge to retained earnings of \$40,000,000.

On August 31, 1999 the Company issued 2,400,000 Class B Subordinate Voting Shares for \$3,000,000.

On November 24, 1999, a shareholder converted 301,266,400 Class B Subordinate Voting Shares into 301,266,400 Class A Non-Voting Shares. On December 22, 1999, the Company issued 52,160,000 Class A Non-Voting Shares and 9,840,000 Class C Multiple Voting Shares under an employment agreement to an executive officer for \$77,500,000. The Company also received a promissory note of \$77,500,000 from the executive officer.

On November 24, 1999, the Board of Directors approved an eight-for-one share split of all classes of the Company's stock. All share amounts in 1998 and 1999 have been presented on a post stock split basis.

**10. Stock Based Compensation**

**Stock Option Plan**

The Company has a Long Term Incentive and Share Award Plan that permits the grant of non-qualified stock options, incentive stock options, share appreciation rights, restricted shares, restricted share units, performance shares, performance units, dividend equivalents and other share-based awards to employees and directors. A maximum of 7,133,008 Class A Non-Voting shares may be subject to awards under the plan, which generally have a vesting period of four years. The stock options have terms expiring on or before November 15, 2009.

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Stock option transactions during 1999 were as follows:

	Number of options	Weighted average exercise price \$
Balance—December 31, 1998 .....	—	—
Options granted .....	43,412,480	0.77
Options cancelled .....	—	—
Options exercised .....	—	—
Balance—December 31, 1999 .....	<u>43,412,480</u>	<u>0.77</u>

The weighted average fair value of options granted in 1999 was \$1.29.

The following table summarizes information about stock options outstanding at December 31, 1999:

Exercise price\$	Number outstanding at December 31, 1999	Weighted average remaining contractual life (years)	Options exercisable at December 31, 1999
0.63	33,786,880	9.0	8,822,080
1.25	9,625,600	9.5	—
<u>0.63-1.25</u>	<u>43,412,480</u>	<u>9.2</u>	<u>8,822,080</u>

The Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") as permitted by SFAS No. 123 "Accounting for Stock Based Compensation" ("SFAS 123"), and, accordingly, recognizes compensation expense for stock option grants to the extent that the estimated fair value of the stock exceeds the exercise price of the option at the measurement date. The compensation expense is charged against operations ratably over the vesting period of the options and was \$4,284,000 in 1999 (1998—\$nil). Under the method prescribed by SFAS 123, the weighted average fair value of the stock options granted in 1999 is \$28,083,000 (to be amortized over the employee service period) and the Company's 1999 net income and loss per share under this method would have been as follows:

Net Income for the year .....	\$23,640
Additional compensation expense .....	(1,425)
Pro forma net income for the year .....	<u>22,215</u>
Pro forma basic and fully diluted loss per share .....	\$ .04

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The pro forma compensation expense is estimated using the Black Scholes option-pricing model assuming no dividend yield and the following weighted average assumptions for options granted during the year ended December 31, 1999:

Expected volatility (private company) .....	0.0%
Risk free interest rate .....	5.2%
Expected life (in years) .....	4.0

**Restricted stock and other stock issuances**

During the year, the Company issued stock to certain directors and officers of the Company. To the extent that these stock issuances are considered to be below fair value, stock based compensation is recognized and amortized over the appropriate periods. The Company recognized \$176,164,000 of deferred stock-based compensation related to stock issued to these officers and directors in 1999 of which \$2,832,000 was expensed in the year.

The shares issued to the executive officer are subject to a repurchase by the Company at the lesser of fair market value of the shares and the original purchase price of the shares plus interest. The restriction lapsed with respect to 15,500,000 shares immediately on commencement of employment and lapses for 12,400,000 shares in 2000, 13,639,968 shares in 2001 and 2002 and the remainder in 2003. Under certain conditions, the executive officer may put back a certain number of shares to the Company, or at the option of the Company to Worldwide Fiber Holdings Ltd., at fair market value to repay the promissory note. Deferred compensation related to these shares will be amortized over the periods covered by the repurchase restriction.

**11. Income taxes**

Income before equity income, income taxes and minority interest.

The components of income before equity income, income taxes and minority interest are as follows:

	1999 .. \$	1998 \$
Canadian .....	46,881	5,683
U.S. ....	14,507	8,052
	<u>61,388</u>	<u>13,735</u>

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**Current income taxes**

The provision for current income taxes consists of the following:

	1999 \$	1998 \$
Canadian .....	25,742	2,599
U.S. federal .....	11,775	2,563
U.S. state and local .....	2,821	481
	<u>40,338</u>	<u>5,643</u>

The provision for income taxes differs from the amount computed by applying the statutory income tax rate to net income before taxes as follows:

	1999 %	1998 %
Canadian statutory rate .....	45.5	45.6
Foreign tax at other than Canadian statutory rate .....	(5.0)	(4.5)
Stock based compensation .....	6.8	—
Investment income .....	1.6	—
Other .....	1.3	—
	<u>49.3</u>	<u>41.1</u>

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**Deferred Income taxes**

Significant components of the Company's deferred tax asset and liability are as follows:

	<u>1999</u> \$	<u>1998</u> \$
<b>Deferred tax asset</b>		
Expenses not deductible in current period .....	8,838	—
Tax loss carryforwards .....	4,259	—
Property and equipment .....	7,596	1,088
Other .....	185	185
	<u>20,878</u>	<u>1,273</u>
Valuation allowance .....	—	—
<b>Net deferred tax asset</b> .....	<u>20,878</u>	<u>1,273</u>
<b>Deferred tax liability</b>		
Property and equipment .....	1,760	—
Financing costs .....	1,313	—
	<u>3,073</u>	<u>—</u>

Management believes that, based on a number of factors, it is more likely than not that the deferred tax asset will be fully utilized, such that no valuation allowance has been recorded.

**12. Concentration of credit risk**

Financial instruments that potentially subject the Company to a significant concentration of credit risk consist primarily of cash and cash equivalents, short-term investments, accounts receivable, unbilled revenue and due from parent which are not collateralized. The Company limits its exposure to credit loss by placing its cash and cash equivalents and short-term investments with high credit quality financial institutions. Concentrations of credit risk with respect to accounts receivable and unbilled revenue are considered to be limited due to the credit quality of the customers comprising the Company's customer base.

The Company performs ongoing credit evaluations of its customers' financial condition to determine the need for an allowance for doubtful accounts. The Company has not experienced significant credit losses to date. Accounts receivable was comprised of 22 customers at December 31, 1999 and 12 customers at December 31, 1998.

The concentration of credit risk relating to the amount due from the parent is considered limited due to the credit quality of the Company's parent. The Company's three largest customers represented 22%, 15% and 10% of the Company's total revenue for 1999. As described in Note 1, substantially all of the Company's revenues during the period ended December 31, 1998 were earned from construction services provided to Leducor.

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**13. Segmented Information**

The Company operates within a single operating segment being the construction and installation of fiber optic network assets. These fiber optic network assets are being constructed in Canada, the U.S. and Europe including a transatlantic link. A significant portion of the transatlantic link will be owned by a subsidiary in Barbados. Revenues, property and equipment, assets under construction, and deferred financing costs are located as follows:

	Revenues		Property and equipment—net		Assets under construction		Deferred financing costs—net	
	1999 \$	1998 \$	1999 \$	1998 \$	1999 \$	1998 \$	1999 \$	1998 \$
Canada .....	170,705	84,534	38,208	3,794	46,683	4,424	22,199	6,650
U.S. ....	189,041	79,785	33,669	220	53,221	7,037	—	—
Barbados .....	—	—	—	—	169,648	—	—	—
Europe .....	—	—	5,134	—	30,851	—	—	—
	<u>359,746</u>	<u>164,319</u>	<u>77,009</u>	<u>4,014</u>	<u>300,403</u>	<u>11,461</u>	<u>22,199</u>	<u>6,650</u>

The revenues are based on the location of the construction activities.

**14. Commitments**

**Network developments**

The Company has, in the normal course of business, entered into agreements to provide construction services and fiber optic network assets to third parties in Canada and the United States.

**Right of way access agreements**

The Company has, in the normal course of business, entered into various agreements to secure the rights of ways along its network routes. In general, most agreements have an option renewal clause stating that grantors cannot unjustly withhold their acceptance of a renewal. Future minimum payments on significant rights of ways are as follows:

2000 .....	\$25,051
2001 .....	\$17,051
2002 .....	\$17,051

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**Operating leases**

The Company leases certain facilities and equipment used in its operations under operating leases. Future minimum lease payments under these lease agreements at December 31, 1999 are as follows:

2000 .....	\$7,489
2001 .....	\$6,244
2002 .....	\$3,349
2003 .....	\$1,153
2004 .....	\$ 671

The Company pays Leduc approximately \$825,000 per year in connection with its lease of the Toronto facilities. The lease expires in 2009.

**Supply Agreements**

On June 18, 1999, a subsidiary of the Company entered into a supply agreement, with Tyco Submarine Systems Ltd. ("Tyco") whereby Tyco will serve as the primary contractor for the Company's trans-Atlantic cable project called "360atlantic". The initial contract price is approximately \$607 million. The Company paid \$214 million in the year ended December 31, 1999 on this contract. (1998—\$NIL)

The Company has placed purchase orders of \$27 million with suppliers of bandwidth equipment.

**CN/IC Agreements**

On May 28, 1999, the Company entered into agreements with Canadian National Railway Company ("CN") and Illinois Central Railroad Company ("IC") to license rights-of-way along certain of their respective rail transportation systems (the "Routes"). In connection with these license agreements, the Company formed subsidiary companies with CN (WFI-CN Fibre Inc.) and IC (Worldwide Fiber LLC) (the Company having a 75% interest and CN or IC having the remaining 25% interest) for the purpose of licensing the rights-of-way from CN and IC and developing the projects along the Routes.

**15. Subsequent events**

**Share Capital Reorganization**

Concurrent with the closing of a public offering, the Company will reorganize the share capital as follows: the holders of existing Class B Subordinate Voting Shares will convert or exchange their shares into Class A Non-Voting Shares and all authorized but unissued Class B Subordinate Voting Shares will be cancelled; the Series A Non-Voting Preferred Shares will be converted or exchanged into our Class A Non-Voting Shares and all of the authorized but unissued Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares will be cancelled; the existing

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Class A Non-Voting Shares will be redesignated as Subordinate Voting Shares and the terms shall be amended to provide the holders with one vote per share; the existing Class C Multiple Voting Shares will be amended to provide the holders with 10 votes per share and the Class C Multiple Voting Shares will be redesignated as Multiple Voting Shares; and a class of unlimited Preferred Shares, issuable in series will be created.

**GlobeNet Acquisition**

The Company has entered into a definitive agreement to acquire 100% of the outstanding shares of GlobeNet Communications Group Limited in exchange for approximately \$640 million worth of newly created Subordinate Voting Shares. The number of Subordinate Voting Shares to be issued by the Company will be based on an initial public offering price.

**Acquisition of remaining 25% of WFI-USA**

The Company has entered into a commitment with Mi-Tech to acquire its 25% interest in WFI-USA in exchange for \$312 million worth of Class A Non-Voting Shares of the Company. The number of shares to be issued by the Company will be determined based on an initial public offering price.

**CN/IC**

On March 8, 2000, the Company entered into an agreement with CN and IC to acquire their respective 25% interests in WFI-CN Fibre Inc. and Worldwide Fiber IC LLC in exchange for \$160 million worth of Class A Non-Voting Shares of the Company. The number of Class A Non-Voting Shares to be issued by the Company will be based on an initial public offering price. Pursuant to this agreement, payment terms for right-of-way fees were amended requiring the right-of-way fees to be paid over a three year term.

**Canadian telecommunications arrangement**

The Company has entered into an arrangement to transfer certain Canadian telecommunications equipment and related facilities to a subsidiary of Leducor which will be held 66 2/3% by Leducor and 33 1/3% by the Company in exchange for 51% of the non-voting participating shares of the subsidiary.

**Acquisition of colocation facilities**

The Company has agreed, subject to execution of definitive agreements to acquire colocation facilities in a number of North American cities. The aggregate purchase price for these acquisitions is \$158 million payable in a combination of cash and newly created Subordinate Voting Shares.

**360atlantic credit facility**

The Company has entered into a credit agreement with certain lenders pursuant to which the lenders have provided a credit facility totalling U.S. \$565,000,000.



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**(tabular amounts expressed in thousands of U.S. dollars)**

***360atlantic credit facility***

The Company has entered into a credit agreement with certain lenders pursuant to which the lenders have provided a credit facility totalling U.S. \$565,000,000.

***Share split***

On March 20, 2000, the Board of Directors approved a two-for-one share split of all classes of the Company's stock. All share amounts in 1998 and 1999 have been presented on a post-stock split basis.

***Share issuances***

Subsequent to December 31, 1999, the Company issued 411,214 Class A Non-Voting Shares to a consultant of the Company. In addition, the Company will issue additional Series A Preferred Shares in connection with the purchase price adjustment provisions of a subscription agreement.

***Name change***

On March 14, 2000, the Company changed its name from Worldwide Fiber Inc. to *360networks Inc.*

Exhibit 5: Affidavit of David Love



PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA

In the matter of the Application of )  
360networks (USA) inc. )  
for a Certificate of )  
Public Convenience and Necessity to )  
provide Telecommunications Services )

Docket No. \_\_\_\_\_

AFFIDAVIT OF DAVID LOVE

INTRODUCTION

My name is David Love. My business address is 143 Union Boulevard, Suite 300, Lakewood, Colorado 80228. I am the Senior Vice President of 360networks (USA) inc. ("360networks").

The purpose of my affidavit is to demonstrate the fitness of the applicant 360networks to operate as a facilities-based CLEC in the areas of North Dakota currently served by US West Communications, Inc. ("US West"). As described in 360networks's Application, 360networks's proposes to provide a range of facilities-based, high capacity local exchange services, including but not limited to: data services, switched and dedicated trunks, digital subscriber line, and exchange access services. 360networks may also offer local services by utilizing the switching and transport capacity of other existing telecommunications providers pursuant to negotiated or tariffed arrangements.

360networks, inc. is a leading independent, facilities-based provider of fiber optic communications network products and services. By the end of 2001 360networks, inc. expects its network to consist of approximately 56,300 route miles in North America, Europe and South America, including an undersea cable between North America and Europe and an undersea cable between South America and North America. 360networks, inc. recently agreed, subject to execution of definitive agreements, to acquire collocation facilities or site rights in ten cities in North America comprising approximately 2.9 million square feet. It intends to expand its network to provide connectivity on a global basis. The design of its network uses state-of-the-art optical technologies that it believes greatly reduces complexity and cost while allowing it to offer increased reliability and a wide range of products and services. In addition, it offer network services to meet its customers' demands and enable Internet services and intends to develop products and services that capitalize on the convergence of telecommunications and high-bandwidth applications and services.

Its network, scheduled to be completed by the end of 2001, consists of fiber optic assets and capacity that 360networks, inc. has installed or acquired from other developers and carriers through swaps, purchases, leases, IRUs or other contractual rights along diverse POW. In North America, its network is expected to cover approximately 24,100 route miles, of which more than 12,200 route miles have been developed to date, encompassing both long-haul and intra-city route miles and providing connectivity among approximately 50 major population centers. In Europe, its network is expected to cover approximately 10,600 long-haul route miles (assuming, with respect to 1,300 route miles, the exercise of an option that it has), of which more than 4,900 route miles have been developed to date, providing connectivity among approximately 35 major

population centers. Its 7,600 route mile fully protected undersea cable between North America and Europe will have the capacity to be a 1.92 terabits per second (“tbps”), self-healing ring that will connect landing sites in Boston, Halifax, Dublin and Liverpool and to major gateway cities in Europe and North America, including London and New York. Its planned 14,000 route mile fully protected undersea cable between South America and North America will have the capacity to be a 1.28 terabits per second, self-healing ring that will be able to offer city-to-city connectivity between 6 major population centers in Brazil, Venezuela, Bermuda and the United States. It intends to expand its planned network to more population centers through the addition of intercity and city ring capacity in North America, Europe and South America. 360networks, inc. is also reviewing opportunities to expand the geographic reach of its network, including transpacific connectivity to Asia. In addition, it intends to extend its network to Buenos Aires through undersea and/or terrestrial routes.

When the company installs facilities, it will deploy the following or a similar configuration: Petitioner's network will consist of multiple HDPE SDR 11 conduit banks, complete with regeneration/amplification facilities approximately every forty (40) miles. Petitioner will have points of presence (POP) sites in the larger metropolitan areas. Petitioner's network will utilize state-of-the-art fiber optic strands, which allow for the high speed, high quality transmission of data, video and voice communications. Petitioner plans to install an average of 144 fiber optic strands on major builds throughout the network, and Petitioner may install as many as 264 fibers or more in high demand areas. The advanced technical operating characteristics of the network will enable Petitioner to provide technologically advanced dark fiber to customers at low cost by permitting higher capacity transmission over longer distances between regeneration and amplifier facilities. The network is currently compatible with the highest commercially available

transmission capacity (OC-192) and can accommodate advanced capacity-intensive data applications such as Frame Relay, ATM, multimedia and Internet related applications.

#### DESCRIPTION AND QUALIFICATIONS OF 360networks

360networks is a Corporation organized under the laws of the State of Nevada.

360networks is qualified to conduct business within the State of North Dakota as a foreign business entity. 360networks (USA) inc. is authorized to provide local exchange service in Iowa, Kentucky, Montana, New York, Oregon, Rhode Island, Utah, Wisconsin, Wyoming and Washington D.C.; and is authorized to provide interexchange service in Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. 360networks is in the process of applying for authorization to provide resold and facilities-based interexchange and local exchange service throughout the United States. Applicant has not been denied authority for any of the services for which it seeks authority in this Application. 360networks is well-qualified, managerially, technically and financially to provide the competitive local exchange services for which authority is requested in its Application.

The senior management of 360networks has great depth in the telecommunications industry and offer extensive telecommunications business technical and managerial expertise. Biographical information on key members of 360networks's management team is attached to the application as Exhibit 6.

360networks has sufficient financial capability to provide the requested telecommunications services in North Dakota and the financial capability to maintain those services. Applicant's proposed competitive local exchange service is economically feasible and in the public interest.

360networks's management team will adhere to a strict and high standard of service policies and procedures which will ensure continued quality service. As a new entrant in the North Dakota telecommunications market, 360networks will be able to win over a keep customers only through consistent application of those policies and procedures. Additionally, 360networks will maintain a customer service department. Customer service representatives will be trained in all areas of customer complaints and services and will be held to the highest standards of accountability and ethics. Customers will be able to reach 360networks customer service via a local or toll-free number 24 hours a day, seven days a week.

#### PUBLIC CONVENIENCE AND NECESSITY

A decision by the Commission to grant 360networks authority to provide competitive local exchange telecommunications services is in the public interest. 360networks is well qualified to operate as such a service provider in North Dakota. Consumers of telecommunications services in North Dakota will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the local exchange telecommunications market. Granting 360networks's Application would enhance this development of competition in the local exchange market and provide the consumers of North Dakota with all of the benefits described above.




The grant of 360networks's application will preserve and advance universal service, safeguard the rights of consumers, protect the public health, safety and welfare, and promote the public interest. 360networks is an alternative, competitive carrier which intends to provide telecommunications services targeted toward small and medium size businesses. 360networks will thus give these customers in North Dakota a real choice for their telecommunications needs.

#### CONCLUSION

360networks's Application and my Affidavit in support thereof demonstrate that 360networks possesses all the requisite qualifications to be a competitive local exchange service provider in North Dakota, and that the grant of this request is in the public interest.

360networks (USA) inc.



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David Love

Its: Senior Vice President

VERIFICATION

State of Colorado

County of Jefferson

)  
)  
)  
)

Case No. PU-\_\_\_\_\_

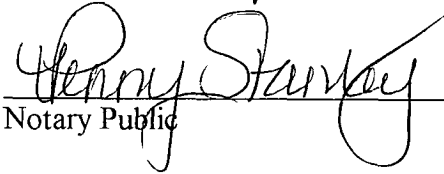
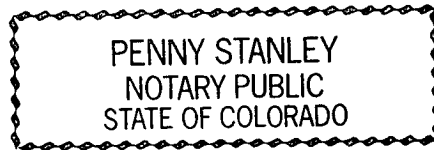
I, David Love, do on oath depose and state that the facts contained in the foregoing statement are true and correct to the best of my knowledge and belief.



David Love

Its: Senior Vice President

Subscribed and sworn to me  
this 21<sup>st</sup> day of September, 2000.

  
Notary Public

My Commission Expires 10/04/2003

## Exhibit 6: Biographical Information

Ron Stevenson has served as our Vice Chairman since March 200, a Director since our inception, was previously our President and is a Director of Leducor Inc. Before joining us, Mr. Stevenson spent 28 years with Leducor. From 1989 to 1998, Mr. Stevenson was Executive Vice President of Operations for Leducor Industries' telecommunications and civil divisions and was responsible for construction and project development.

David Love has served as our Senior Vice President, Network Operations since September 1999. Mr. Love's involvement in the telecommunications industry, both domestic and international, spans over 28 years. Prior to joining us, Mr. Love managed large network deployments and multi-state network operations at US West. He has international experience with MediaOne International directing the design and network operations for broadband services using hybrid fiber coax technology in Belgium.

Bruce Tinney has been our Senior Vice President, Infrastructure Sales since our inception. Before joining us, Mr. Tinney spent more than 22 years in the telecommunications industry in a variety of executive positions, including Director of Business Development for Qwest Communications from 1996 to 1998 and Vice President of Operations for Fanch Communications from 1991 to 1996. Before joining Fanch Communications, Mr. Tinney spent over 15 years with Time Warner Communications in a number of leadership positions.

Jerry Tharp has overseen our U.S. operations as President of 360-USA since our inception. Mr. Tharp's involvement in the telecommunications industry spans over 40 years. Before joining us, Mr. Tharp was the Director of Business Development for Mi-Tech from 1996 to 1997 and the Vice President, Construction and Engineering for Qwest Communications International Inc. from 1994 to 1996. From 1987 to 1994, Mr. Tharp held several positions with MCI WorldCom Inc. dealing with ROW, construction and engineering issues. His telecommunications career started with US West and its predecessor corporation, where he held numerous positions.

92-2410-00-534

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